

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 62424 through A MC 62426 and A MC 64516 through A MC 6423.

Appeal Dismissed.

1. Administrative Practice--Appeals--Practice Before the Department--Rules of Practice: Appeals: Dismissal

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

APPEARANCES: Dani Garrity, Wickenburg, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by Dani Garrity of Garrity's Mining Claim Service on behalf of Anthony F. O'Brien from a decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Inter-Peaks Nos. 1 and 2, Nos. 11 through 16, and Pecos #1, #2, and #3 lode mining claims, A MC 62424 through A MC 62426 and A MC 64516 through A MC 64523, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM prior to December 31, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

[1] At the outset, we wish to note that the file does not reflect any interest in the subject mining claims in the name of Garrity's Mining Claim Service or Dani Garrity. Departmental regulation 43 CFR 1.3 defines who may practice before the Department. 1/ Garrity has made no showing of qualification under this regulation, even though Garrity purports to represent

1/ That regulation provides as follows:

"§ 1.3 Who may practice.

"(a) Only those individuals who are eligible under the provisions of this section may practice before the Department, but this provision shall not be deemed to restrict the dealings of Indian tribes or members of Indian tribes within the Department.

"(b) Unless disqualified under the provisions of § 1.4 or by disciplinary action taken pursuant to § 1.6:

Anthony F. O'Brien in this matter. An appeal brought by a person who does not fall within any of the categories of persons authorized by the regulation to practice within the Department is subject to dismissal. J. C. Trahan, 74 IBLA 15 (1983); Thomas L. Tuttle, 71 IBLA 265 (1983); Verne G. Long, 57 IBLA 263 (1981); W. Duane Kennedy, 24 IBLA 152 (1976); Pierce and Denlinger, 22 IBLA 396 (1975); see also United States v. Gayanich, 36 IBLA 11 (1978). The appeal is therefore dismissed.

The Board observes, by way of dicta, that were we to consider this appeal on its merits, we would affirm the decision below. Where the record does not disclose that the instruments required by section 314 of FLPMA were timely filed with the proper office of BLM, there is a conclusive presumption that the claims are abandoned.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

fn. 1 (continued)

"(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1963, shall be permitted to practice before the Department.

"(2) Attorneys at law who are admitted to practice before the courts of any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Trust Territory of the Pacific Islands, or the District Court of the Virgin Islands will be permitted to practice without filing an application for such privilege.

"(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; (ii) a partnership of which he is a member; (iii) a corporation, business trust, or an association, if such individual is an officer or full-time employee; (iv) a receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (v) the lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney; (vi) a Federal, State, county, district, territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or (vii) an association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter."

